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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi-2, the 26th November 1956

S.R.O. 2982.—In continuation of the Election Commission's notification No. 82/28/54/6552 dated the 21st April, 1956 (S.R.O. 1123) published in the Gazette of India Extraordinary, Part II—Section 3, dated the 14th May, 1956, under Section 106 of the Representation of the People Act, 1951 (XLIII of 1951), the Election Commission hereby publishes the judgment of the High Court of Judicature at Madras, delivered on the 31st October, 1956, on Writ Petitions filed by Dr. V. K. John, Advocate, Andhra Insurance Buildings, No. 337 Thambu Chetty Street, Madras, against the order dated the 18th November, 1956 of the Hon'ble Mr. Justice Balakrishna Ayyar of the Madras High Court passed in an appeal against an interlocutory order of the Election Tribunal, Madras, and the final order of the Election Tribunal, Madras in Election Petition No. 28 of 1954.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Wednesday, the Thirty-first day of October, One thousand nine hundred and fifty-six

PRESENT:—

The Honourable Mr. P. V. Rajamannar, Chief Justice

and

The Honourable Mr. Justice Panchapakesa Ayyar.

WRIT APPEAL No. 19 OF 1956

and

WRIT PETITION No. 478 OF 1956.

WRIT APPEAL No. 19 OF 1956.

Dr. V. K. John—*Appellant* (Petr. in W.P. Nos. 478 and 479 of 1955).

Vs.

1. G. Vasantha Pai.
2. The Election Tribunal, Madras, by its Chairman. } *Respondents* (Respts. 1 and 3 in do)

Appeal under clause 15 of the Letters Patent against the order of the Honourable Mr. Justice Balakrishna Ayyar dated 18th November 1955 and made in W.P. Nos. 478 and 479 of 1955, W.P. No. 478 of 1955 presented to the High Court under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court will be pleased to issue a Writ of prohibition or such other writ or such directions as may be appropriate by prohibiting the Chairman, Election Tribunal, Madras, the 3rd Respondent herein from considering any allegation referable to relief in paragraph 18(B) of the Election Petition No. 28 of 1954 for any purpose whatsoever whether for a finding under section 99 of the Representation of the People Act, 1951, or otherwise and from acting in contravention of the orders passed by the Honourable Mr Justice Rajagopala Ayyangar, dated 11th January 1955, and made in Writ Petition Nos. 719 and 723 of 1954 on the file of the High Court and W.P. No. 479 of 1955, presented under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed with W.P. No. 478 of 1955 on the file of the High Court, the High Court will be pleased to issue a Writ of Certiorari or any other appropriate writ calling for the records of the Election Tribunal, Madras. the 3rd Respondent herein in Election Petition No. 28 of 1954 and quash the order of the Tribunal therein dated 21st June 1955.

WRIT PETITION No. 478 OF 1956.

Dr V. K. John—*Petitioner.*

Vs.

1. Chief Judge, Court of Small Causes, Madras.
2. Sri G. Vasantha Pai.
3. Dr. A. Srinivasan.
4. Dr. M. Santhosham. } *Respondents.*

Petition under Article 226 of the Constitution of India praying that in the circumstances stated therein the High Court will be pleased to issue a Writ of Certiorari or any other appropriate writ calling for the records relating to the Election Petition No. 28 of 1954 on the file of the Election Tribunal, Madras, now in custody of the 1st Respondent and quash the order in so far as it relates adversely to the petitioner herein.

ORDER:—This Appeal and the petition coming on for hearing on Tuesday, 2nd October 1956 and Wednesday, 24th October 1956, upon perusing the Grounds of Appeal in W.A. No. 19/56, the petition in W.P. No. 478/56 and the affidavit filed in support thereof and the order of the High Court dated 18th November 1955, and made in W.P. Nos. 478 and 479 of 1955 and counter affidavit filed on behalf of Respondent 2 and the other papers material to this Appeal and this petition and upon hearing the arguments of Messrs. M. K. Nambiar, K. Krishnaswami Ayyangar, T. Ramaprasada Rao and K. K. Venugopal, Advocates for the Appellant in Writ Appeal No. 19 of 1956 and of Messrs. M. K. Nambiar, T. Ramaprasada Rao and K. K. Venugopal, Advocates for the Petitioner in W.P. No. 478 of 1956 and of Mr. T. Krishna Rao, Advocate for Respondent 1 W.A. No. 19 of 1956, and Respondent 2 in W.P. No. 478 of 1956 and of Mr. M. G. Kamath, Advocate for Respondent 4 in W.P. No. 478 of 1956 on both the days, and notice to the 2nd Respondent in W.A. No. 19 of 1956 having been dispensed with and Respondents 1 and 3 in W.P. No. 478 of 1956 not appearing in person or by advocate and having stood over for consideration till this day, the Court made the following,

ORDER

(Judgment of Court delivered by the Honourable the Chief Justice)

The above appeal and petition arise out of an election petition filed by the contesting respondent G. Vasantha Pai (who will hereafter be referred to as the respondent) before the Election Commission, New Delhi. The respondent and three others including Dr. V. K. John, the appellant and the petitioner before us, were candidates for election to the Madras Legislative Council, from the Graduates Constituency. Dr. John and one Dr. A. Srinivasan were declared elected to the two vacancies in the Constituency. The respondent filed the election petition praying for the following three reliefs, *viz.*, (a) declaring the election to be wholly void; (b) declaring the election of both the returned candidates as void; and (c) giving a finding that the first respondent (Dr. John) has been guilty of the corrupt practices specified in paragraphs 8, 9-A and 11 and illegal practice specified in paragraph 12 of the petition, and the second respondent (Dr. Srinivasan) has been guilty of the corrupt practices specified in paragraphs 8 and 11 of the petition. The illegal practice specified in paragraph 12 was that mentioned in section 125(3) of the Representation of the People Act, 1951 (XLIII of 1951), hereinafter referred to as the "Act". Particulars of the illegal practice were given in schedule D to the petition. Briefly they were that Dr. John got printed and circulated, circulars having reference to his election which did not bear on their face the name of the printer. Some of the allegations in the petition fell within section 100, sub-section (1) of the Act and were relevant to the relief of declaration that the election was wholly void. Other allegations related to each of the returned candidates and fell within section 100, sub-section (2) of the Act.

The petition was strenuously contested by both the returned candidates. Though it was filed on the 21st July 1954, it was not finally disposed of till 16th April 1956 by an Election Tribunal at Madras constituted by the Election Commissioner. Dr. John and Dr. Srinivasan at the outset of the enquiry took out two applications praying that the tribunal may be pleased to direct the striking out of prayers (b) and (c) and to direct the striking out of paragraphs 5 to 7, the latter part of paragraph 8 and paragraphs 9 to 16 of the petition. The main grounds on which these applications were taken out were: (1) that the petitioner (the respondent herein) was not entitled to claim more than one relief, and (2) that the petition, in so far as it prayed for the relief of having the election of the returned candidates set aside, was barred by time, as it had not, been filed within the period of limitation prescribed by rule 119(a) of the Rules framed under the Act. The election tribunal rejected both the petitions. To quash the order of the tribunal rejecting these petitions, the returned candidates filed two Writ Petitions, Nos. 719 and 723 of 1954. These Petitions were heard and disposed of by Rajagopala Ayyangar, J., who agreed with the election tribunal and dismissed them. There were two appeals from the decision of Rajagopala Ayyangar, J. The Division Bench which heard the appeals, to which one of us was a party, agreed with Rajagopala Ayyangar, J., that there was no substances in the first ground. It was held that the petitioner could seek alternative reliefs specified in section 84 of the Act. The Bench however took a view different from that taken by Rajagopala Ayyangar, J., on the question of limitation and held that the petition both against Dr. John and Dr. Srinivasan, so far as relief (b) in paragraph 18 of the petition was concerned was out of time under rule 119(a). It was further held that the petition, in so far as it seeks a declaration that the election is wholly void was in time. The following passage in the judgment of the Division Bench (reported in John v. Vasanta Pai) (1) sets out the result of the conclusion arrived at by the Bench:

> "The result of our construction of rule 119 is that the election petition is not maintainable against the Respondents 1 and 2 so far as relief (b) in paragraph 18 is concerned. The Election Tribunal will, therefore, have no jurisdiction to proceed with the trial of the petition in respect of this relief. The fact that after listening to the parties they overruled the objection as to their jurisdiction in this behalf does not make any difference. If, as we have now found, the Tribunal was not competent to entertain the petition so far as that relief is concerned, the appropriate writ will, therefore, be writ of prohibition prohibiting the Election Tribunal from proceeding with the trial of the Election petition, so far as relief (b) in paragraph 18 of the petition is concerned."

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(1) (1955 M.L.J. 629, 735.

When the matter went back to the Election Tribunal for trial, apparently an objection taken by Dr. John and Dr. Srinivasan the Tribunal framed the following issue:

> "Whether the view of the Writ of Prohibition in Writ Appeals Nos. 25 and 26 of 1955, the petitioner can claim to rely on the grounds relating to the validity of the election of respondents 1 and 2 for the declaration sought in paragraph 18 (a) of the petition that the election is wholly void and for finding sought in paragraph 18(c) of the petition".

The tribunal decided that the decision of the Division Bench did not preclude it from investigating matters which were germane to prayers (a) and (c) merely because those matters also happened to be germane to prayer (b). It observed:

> "In the above circumstances, and where the writ issued refers only to the relief and the appeals are otherwise dismissed, we are afraid we will be reading too much into it if the contention of the respondents 1 and 2 be accepted and the prohibition extended by implication to the Tribunal's duty under section 99. This part of the issue is accordingly found in the affirmative for the election petitioner".

Contesting the soundness of this decision of the Tribunal both Dr. John and Dr. Srinivasan filed petitions under Article 226 of the Constitution for the issue of a writ of prohibition or other appropriate writ restraining the Election Tribunal from trying any issue or enquiring into any allegation which would be relevant only for the purpose of giving relief to the second respondent (the respondent herein) under paragraph 18 (b) of his Election Petition, which had been expressly prohibited by the Division Bench. These petitions came on before Balakrishna Ayyar, J. The learned Judge dismissed the petitions. He was of opinion that the trial of an election petition included an enquiry into allegations of corrupt and illegal practices said to have committed at the election and that it was not limited merely to ascertain whether the petitioner was, or was not entitled to the relief he sought. Dealing with the allegation relating to the illegal practice said to have been committed by Dr. John in paragraph (12) of the petition, the learned Judge observed thus:—

> "Under section 125(3) of the Act the issue of any circular, placard, or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof is an illegal practice. Now the omission of the name of the printer or publisher in a circular or placard or poster cannot possibly have any effect on the result of an election. None-the-less, it is an illegal practice and under section 99 of the Act, the Tribunal is required to give a finding on the matter if such a practice is alleged. It would, not, therefore be right to say that the trial of an election petition must be confined to matters, an investigation of which is necessary o decide whether or not the petitioner is entitled to the relief he seeks".

Against the said order of Balakrishna Ayyar, J. dismissing his petition, Dr John has filed Writ Appeal No. 19 of 1956. As, however, there was no stay of the enquiry, the Election Tribunal proceeded with the petition and after elaborately dealing with the several charges made in the petition found that the election petitioner was not entitled to the relief he sought in paragraph 18 (a) of the petition. But on issue 8, which related to the illegal practice under section 125 (3) of the Act alleged against Dr. John, the Tribunal held against him. The Tribunal found that Dr. John had issued circulars without the name and address of the printer appearing thereon and he was therefore guilty of the illegal practice set out in section 125(3) of the Act. The Tribunal therefore made the following:—

ORDER

> "From our finding on Issue 8 it follows that the first respondent (Dr. John) has committed an illegal practice under section 125(3) of the Act entailing the consequential satutory disqualifications and we record a finding to that effect"

The reference here is obviously to section 140 of the Act which runs thus:—

"140. Corrupt and illegal practices entailing disqualification:—

(1) The following corrupt or illegal practices relating to elections shall entail disqualification for membership of Parliament and of the Legislature of every State, namely:—

(a) corrupt practices specified in section 123 or section 124, and

(b) illegal practices specified in section 125.

(2) The period of such disqualification shall be six years in the case of a corrupt practice, and four years in the case of an illegal practice, counting from the date on which the finding of the Election Tribunal as to such practice takes effect under this Act".

Writ Petition No. 478 of 1956 has been filed by Dr. John to have this part of the order quashed.

Mr. M. K. Nambiar, learned counsel for Dr. John challenged the correctness of the finding of the Election Tribunal on the merits. As pointed out by the Supreme Court in Jamuna Prasad Mukhariya *v.* Lachhi Ram (2) the finding of the tribunal that a candidate committed an illegal practice within the meaning of section 125(3) is a finding on a pure question of fact. But Mr. Nambiar contended that the finding was vitiated by an error apparent on the fact because the documents in question did not fall within the category of 'Circular, placard or poster'. *We see no substance in this connection. Obviously, none of the documents is a placard or poster. But it is clear to us that three of them are circulars. Mr. Nambiar relied upon decisions in which the corresponding provision in the Representation of the People Act in England was construed; but the words used in the English statute are "any bill, placard or poster" and the decisions turned upon the interpretation of the word "bill". In our statute that term is absent and instead we have the word "Circular". A document may be a circular but not necessarily a bill, placard or poster. (*Vide* the causes cited in note (i) at page 203 of Halsbury's Laws of England, Third Edition, Volume 14, also note (1) at page 204 of the same book which mentions the case of *Alcott* v. *Emden* (3) in which it was held that a Circular headed with the complainant's name and the words "shall he be our new Mayor" and sent to the complainant, the town clerk and four councillors was held to be a bill). We are unable to derive any assistance from the two decisions in *The Cockermouth Division Case* (4) and *The Borough of Oxford Case* (5) which turned upon the meaning of the word "bill".

According to the meaning given in the Concise Oxford Dictionary, "Circular" is something addressed to a circle of persons and the meaning of "circular letter" or "Circular" is given as notice, advertisement, etc. reproduced for distribution. Obviously, the material letters were such circular letters printed for distribution among the voters. We therefore accept the finding of fact that the petitioner, Dr. John, was guilty of the illegal practice mentioned in section 125(3) of the Act.

Mr. Nambiar's next and more serious contention was that the Election Tribunal had no jurisdiction to give a finding on issue 8 relating to the said illegal practice. His argument was that as the Division Bench of this Court had prohibited the trial of the petition in so far as it pertained to prayer (b) in paragraph 18 of the petition, the Tribunal would have no jurisdiction to enquire into any allegation which was material and relevant only to that relief and which had nothing whatever ..... to do with the other relief, viz., a declaration that the election was wholly void. This contention was pressed upon Balakrishna Ayyar, J. who found that there was something to be said for this point of view but it seemed to him it was not the whole of the matter, because an election petition differed fundamentally from an ordinary civil suit. The public were substantially interested in an election petition in seeing that all elections are fair and free and not vitiated by corrupt or illegal practices. It was on this view that he refused to issue a Writ of prohibition preventing the tribunal from enquiring into the allegation of this illegal practice. Mr. Nambiar contended that this view was wrong.

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(2) (1954) IIM. L. J. 711(S. C.), (3) (1904) 68 J. P. 434 D.C.
(4) 50'M & H. 155. (5) 70'M & H. 49.

Mr. T. Krishna Rao, learned counsel for the respondent, maintained that it was correct and was supported by the provisions of the Act and the general policy underlying enquiries into the validity of elections. His contention was that the allegations in an election petition need have no reference to the particular relief claimed and once there was an allegation of the Commission of any corrupt or illegal practice, the tribunal was bound to enquire into it and give its finding thereon though such a finding may be thoroughly irrelevant and immaterial having regard to the relief claimed. According to him, all that the writ of prohibition issued by the Division Bench prevented was the relief (b) in paragraph 18 of the petition being given to the petitioner. He referred us to section 83(1) and (2), section 85, and section 90(4), apart from section 99 of the Act, in support of his contention. Support was also sought by him from observations in certain decisions of the Supreme Court.

Section 83, sub-sections (1) and (2) of the Act run thus:—

> "83. Contents of petitions.—(1) An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings. (2) The petitions shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the Commission of each such practice".

The argument of Mr. T. Krishna Rao, which apparently found favour with Balakrishna Ayyar J., was that sub-section (2) stood apart from sub-section (1) and in addition to the material facts, a concise statement of which had to be furnished, the petition might contain allegations of any corrupt or illegal practice not necessarily related to the relief claimed by the petitioner. In our opinion this construction is not sound. Sub-section (1) uses the general expression "material facts" which would include not merely corrupt or illegal practices, but also allegations of improper reception or refusal of votes and any non-compliance with the provisions of the Constitution or of the Act or of any rules made under the Act and any mistake in the use of any prescribed form. The facts which the election petition should contain are facts on which the petitioner relies presumably to enable him to obtain the specific relief which he claims. All that sub-section (2) says is that if and when a corrupt or illegal practice is alleged certain particulars have to be furnished. The sub-section should not be construed to justify the inclusion of any corrupt or illegal practice which may have no relation whatever to the relief claimed by the petitioner. To give an obvious instance, a petitioner files an election petition praying that the election of one of three returned candidates may be declared void; can it be contended with success that the petition can contain allegations of corrupt or illegal practices committed by the other two candidates? In our opinion, certainly not. Section 83, sub-sections (1) and (2) correspond to Order VI, rule 2 and 4 of the Code of Civil Procedure which are in the following terms:—

> "2. Every pleading shall contain and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consequently, Dates, sums and numbers shall be expressed in figures.
>
> 4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading".

We may add that sub-section (3) of section 83 corresponds to rule (5) of Order VI of the Code. It appears to us to be against all principles of judicial procedure that a petitioner should be permitted to include in his petition, allegations which are thoroughly irrelevant to the relief claimed by him. Mr. Krishna Rao referred us also to section 85 and section 90 sub-section (4) of the Act, but they do not carry him any further than section 83.

Reliance was placed by counsel on both sides in connection with this point on the observations in the decision of the *Supreme Court in Sucheta Kripalani* Vs. *Dulat, I.C.S.* (6) in that case an election petition was filed by one M. praying that the election of one S. be declared void and that she (M) be declared to have been duly elected. The validity of the election was attacked on many grounds. A number of major corrupt practices were alleged and further a minor corrupt practice, *viz.*, making a false return of election expenses, was also alleged. It was contended on behalf of the returned candidate S. that the minor corrupt practice, which could not vitiate the election as it was not capable of materially affecting the election, was wholly outside the scope of a proper election petition and so no cognisance of it can be taken by the Election Tribunal. This contention was repelled by the Supreme Court. Bose J. who delivered the judgment of the Court said:—

> "The next question argued was whether an Election Tribunal can enquire into a minor corrupt practice if it is of such a nature that, standing by itself, it could not have been made the basis of an election petition because it could not materially affect the result of the election. We need not go into that because the question is purely academic in this case. The allegation about the minor corrupt practice does not stand by itself. There are also "allegations about major corrupt practices which require investigation and the minor corrupt practices alleged are reasonably connected with them. Section 143 of the Act is a complete answer to the question of the Tribunal's jurisdiction on this point when it is properly seized of the trial of an election petition on other grounds. Whether it could be properly seized of such a trial if this had been the only allegation, or if the minor corrupt practice alleged was not reasonably connected with the other allegations about major corrupt practices, does not therefore arise. As the trial is proceeding on the other matters the Tribunal is bound under section 143, now that the issue has been raised, also to enquire into the question of the falsity of the return".

In our opinion these observations do not support the contention of Mr. Krishna Rao. If this contention is right and that was what was upheld by the Supreme Court then it was unnecessary to say that the minor corrupt practice alleged did not stand by itself and that it was reasonably connected with major practices which had been alleged. It must not also be overlooked that the election petition in that case was concerned with the validity of the election of a particular candidate and the charge of illegal practice was made against that candidate and one of the grounds on which the election of a returned candidate can be set aside is that the election has been procured, or induced, or the result of the election has been materially affected, by, any corrupt or illegal practice.

There is another decision of the Supreme Court from which the learned Judge Balakrishna Ayyar J., quoted certain observations, *viz.*, *Raj Krishna Bose* Vs. *Binod Kanungo* (7). That again was a case in which an election petition was filed challenging the election of a particular candidate on a number of grounds. One of the grounds was that the returned candidate was guilty of a major corrupt practice mentioned in clause (8) of section 123, *viz.*, obtaining assistance for the furtherance of the prospects of the candidate's election from a Government servant. In addition to this; there were other charges of corruption, illegal practices, undue influence and bribery. The tribunal gave its finding only on the issue relating to the corrupt practice mentioned in section 123, clause (8) of the Act but did not give its finding on any of the other issues relating to the various charges levelled against the returned candidate. The Supreme court held that the Tribunal's construction of clause 8 of the section 123 was wrong and set aside its order and remitted the case with a direction that the Tribunal should give its findings on all the issues raised. In doing so, their Lordships expressed their disapproval of the omission of the Tribunal to deal with all the issues thus:—

> "We wish to record our disapproval of the way in which this Tribunal shirked its work and tried to take a short-cut. It is essential that these Tribunals should do their work in full. They are *ad hoc* bodies to which remands cannot easily be made as in ordinary Courts of law. Their duty under section 99 is:

(6) 1955 II M.L.J. (S.C.) 289.

(7) 1945 (I) M.L.J. 489 (S.C.).

'Where any charge is made in the petition of any corrupt or illegal practice having been committed at the election' to record:

'a finding whether any corrupt or illegal practice has, or has not, been proved to have been committed.....and the nature of that corrupt or illegal practice! Also,

'to give the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice and the nature of that practice'. Their duty does not end by declaring and electi[illegible] to be void or not, because section 99 provides that in addition to that:" 'at the time of making an order under section 98 the Tribunal shall also make an order, etc., ...' A number of allegations were made in the petition about corruption and illegal practices, undue influence and bribery. It was the duty of the Tribunal not only to enquire into those allegations, as it did, but also to complete the enquiry by recording findings about those allegations and either condemn or clear the candidate of the charge made".

These observations cannot be understood as justifying the inclusion of allegations of corrupt and illegal practices which have no material bearing on the relief sought. It must be borne in mind that the above observations were made in a case in which the other charges made were made against the returned candidate whose election was challenged. Balakrishna Ayyar J. in dealing with the question now under discussion gave an instance by way of analogy! He said:—

"Suppose a person were prosecuted for breach of trust and for falsification of accounts. Let us further suppose that by reason of an order made in revision the enquiry into the falsification is prohibited. If we were to hold that by reason of such an order, the evidence which may have a bearing on the falsification charge cannot be investigated in order to ascertain whether there has been criminal breach of trust or not, manifest injustice may result."

We are in agreement with the above. Applying the principle of which this is an illustration, to the present case, the only conclusion possible is that the commission of the illegal practice mentioned in section 125(3) cannot be investigated because such investigation is not necessary in order to ascertain whether the election should be declared wholly void on any of the three grounds on which only such a declaration can be made under section 100, sub-section (1).

The learned Judge went on to say:

"There are indications in the statute itself to show that the trial of an election petition includes an inquiry into allegations of corrupt and illegal practices said to have been committed at the election and that it is not limited merely to ascertain whether the petitioner is, or is not, entitled to the relief he seeks."

If this dictum of the learned Judge implies that when an election petition filed against A. to set aside his election contains allegations of corrupt or illegal practices committed by other candidates B. and C., then the Election Tribunal should enquire into such allegations which are totally irrelevant to the relief claimed, we must express our dissent.

A feeble attempt was made by Mr. Krishna Rao to persuade us to hold that the illegal practice alleged was relevant to the relief contained in paragraph 18(a) of the petition because one of the circulars could be used as evidence of the charge that Dr. John carried on a propaganda against the respondent that he was a communist. There is no substance in this contention. What may be relevant is the particular circular as a piece of evidence and not the illegal practice itself which consists in the absence of the name and address of the printer on the circular. Indeed, even if the circular had contained the name of the printer, and therefore no illegal practice had been committed, nevertheless, the circular might be used as evidence in support of the charge of propaganda.

We hold that the Election Tribunal had no jurisdiction to enquire into the charge of the illegal practice mentioned in section 125(3) of the Act made against Dr. John. We therefore allow Writ Petition No. 478 of 1958 and quash that portion of the order of the Election Tribunal w[illegible]ch relates to this charge

covered by issue 8 and the finding that Dr. John had committed an illegal practice under section 125(3) of the Act entaning the consequent statutory disqualifications. The order for costs made under section 99(1) (b) of the Act is also quashed. There will be no order as to costs in the petition before us.

Mr. Nambiar also contended in the alternative that even accepting the finding of the Election Tribunal that Dr. John was guilty of the illegal practice mentioned in section 125(3) of the Act, that finding will not entail any disqualification because of a subsequent amendment of the Representation of the People Act, 1951, by the Representation of the People (Second Amendment) Act, 1956. This amending Act received the assent of the President on the 6th June 1956 and came into force on the 28th August, 1956. Section 66 of this Act substituted a new Chapter for Chapters I and II in Part VII of the principle Act. By this substitution, Chapter II of Part VII of the Principal Act has been completely omitted and it is in this chapter II that section 125 dealing with illegal practices occurs. The result is, from the date of the coming into force of the Representation of the People (Second Amendment) Act, 1956, no Election petition can include a charge of the commission of an illegal practice. The most material section, however, of the amending Act, is section 72. It runs thus:—

> "72. Insertion of new section 140A.—(1) In Part VIII of the principal Act, in Chapter 1, after section 140, the following section shall be inserted, *viz.*, '140A. Removal, or reduction of period, of disqualifications:— The Election Commission may, for reasons be recorded, remove any disqualification under this Chapter or reduce the period of any such disqualification. (2) It is hereby declared that any disqualification for membership entailed by any act which has ceased to be a corrupt or illegal practice under the principal Act as amended by this Act shall stand removed".

Sub-section (2) obviously applies to the present case. The finding of the Election Tribunal entailed the disqualification under section 140 of the principal Act. But the Act as amended, has omitted that illegal practice. *Prima facie*, the effect of sub-section (2) is that such disqualification stands removed from the date on which the amending Act came into force.

Mr. Nambiar contended that section 72 was a declaratory enactment and that it was retro-active, evidently implying that Dr. John must be deemed to have never been disqualified. On the other hand Mr. Krishna Rao contended that the effect of the Section 72(2) of the amending Act can only be to remove the disqualification from the date when the amending Act came into force, but that the disqualification would exist from the date of the order of the Election Tribunal till the date of the coming into force of the Amending Act. In the view we have taken that the Election Tribunal had no jurisdiction to enquire into the charge under Section 125(3) of the Act and the consequential order we have made quashing the finding of the Election Tribunal on this point, it is not necessary for us to decide the question as to the effect of section 72 of the Amending Act.

Nor is it necessary for us to discuss the effect of section 84 of the Amending Act which excludes the application of the Amending Act to pending elections and pending election petitions, save as otherwise provided in that Act.

Writ Appeal No. 19 of 1956 must be, and is hereby dismissed on the ground that the appellant sought for a writ of prohibition to which he will not be entitled as the election Tribunal has completed the enquiry. This dismissal however does not mean that we agree with all that is contained in the order of Balakrishna Ayyar J. against which the appeal has been filed. Actually, in dealing with Writ Petition No. 478 of 1956, we have expressed our dissent from one part of the learned Judge's judgment. The order for costs passed against the Appellant will be set aside but will be no order as to costs in the Appeal.

(Sd.) K. KRISHNAMURTHI,

Assistant Registrar, Appellate Side,

/-True Copy-/

Sub Assistant Registrar, App. Side.

Dated the 31st October 1956

ORDER

W.A. No. 19 of 1956 and W.P. No. 478 of 1956

Allowing the petition for issue of a writ of Certiorari or any other Writ Calling for the records relating to the Election petition No. 28 of 1954 on the file of the Election Tribunal Madras now in custody of the Chief Judge, Court of Small Causes Madras and quashing that portion of the order of the Election Tribunal covered by issue 8 and the order for costs and dismissing the appeal against the order of the High Court dated 18th November 1955 and made in W.P. No. 478 and 479 of 1955.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the eighteenth day of November, One thousand nine hundred and fifty five

PRESENT:—

The Honourable Mr. Justice Balakrishna Ayyar.

WRIT PETITIONS NOS. 476, 478 AND 479 OF 1955.

W.P. No. 476 OF 1955

Dr. A. Sreenivasan—*Petitioner.*

The Election Tribunal, Madras by its Chairman.
2 G. Vasantha Pai. } *Respondents.*

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to issue a writ of Prohibition or other appropriate writ restraining the Chairman, Election Tribunal Madras the 1st respondent herein from trying any issue or enquiring into any allegation in Election petition No. 28 of 1954 which would be relevant only for the purposes of giving relief to the 2nd Respondent herein under para 18 of his Election Petition, which has been expressly prohibited by an earlier writ order dated the 29th April 1955 issued from the High Court in W.A. No. 26 of 1955.

W.P. No. 478 OF 1955.

Dr. V. K. John—*Petitioner.*

Versus

1. Vasantha Pai.
2. Dr. M. Santhosham.
3. The Election Tribunal, Madras by its Chairman. } *Respondents*
4. Dr. A. Srinivasan.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court will be pleased to issue a writ of Prohibition or such other writ or such directions as may be appropriate, by prohibiting the chairman, Election Tribunal, Madras the 3rd Respondent herein from considering any allegation referable to relief in paragraph 18(b) of the election petition No. 28 of 1954 for any purpose whatsoever whether for a finding under Section 99 of the Representation of the people Act 1951 or otherwise and from acting in contravention of the orders passed by the Honourable Mr. Justice Rajagopla Ayyangar dated 11th January 1955 and made in Writ petition Nos. 719 and 723 of 1954 on the file of the High Court.

W.P. No. 479 OF 1955.

Dr. V. K. John—*Petitioner.*

Versus

1. G. Vasantha Pai.
2. Dr. M Santhosham.
3. The Election Tribunal, Madras by its Chairman } *Respondents.*
4. Dr. A. Srinivasan.

Petition under article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed with W.P. No. 478 of 1955 on the file of the High Court, the High Court will be pleased to issue a Writ of Certiorari or any other appropriate Writ calling for the records of the Election Tribunal, Madras, the 3rd Respondent herein Election Petition No. 28 of 1954 and quash the order of the Tribunal thereln dated 21st June 1956.

ORDER:—These petitions coming on for hearing on Tuesday, Wednesday and Thursday the 8th, 9th and 10th days of November 1955, upon perusing the petitions and the affidvits filed in support of W.P. Nos. 476 and 478 of 1955 and the counter affidavit of 2nd Respondent in W.P. No. 476 of 1955 and 1st Respondent in W.P. Nos. 478 and 479 of 1955 filed in W.P No. 476 of 1955 and the Reply affidavit in W.P. Nos. 478 and 479 of 1955 filed in W.P. No. 478 of 1955 and the order of the High Court dated 4th July 1955 and made herein and all other papers material to these applications and upon hearing the arguments of Mr. V.P. Raman Advocate for the petitioner and of Messrs. T. Krishna Rao and A. Narayana Pai, Advocate for the 2nd Respondent and the 1st Respondent not appearing in peron or by Advocate in W.P. No. 476 of 1955 and Mr. K. Krishnaswamy Ayyangar, for Messrs. M. K. Nambiyar, T. Ramaprasada Rao and K. K. Venugopal Advocates for the petitioner and of Messrs. T. Krishna Rao and A. Narayana Pai ,Advocates for the 1st Respondent and of Messrs. K. Srinivasa Rao and M. G. Kamath, Advocates for the 2nd Respondent and Respondents 3 and 4 not appearing in person or by Advocate in W.P. No. 478 of 1955 and Mr. K. Krishnaswamy for Messrs. M. K. Nambiyar T. Ramaprasada Rao and K. K. Venugopal, Advocates for the petitioner and Respondents 1 to 4 not appearing in person or by Advocate in W.P. No. 479 of 1955 on all the days and having stood over for consideration till this day, the court made the following.

ORDER

In April 1954 there was a by-election for two seats in the Madras Legislative Council from the Graduates' Constituency where the voting was to be on the system of proportional representation. Four candidates contested the election, namely, Dr.'s John, Srinivasan and Santhosham and Mr. Vasantha Pai. After the votes were counted on 9th April 1954 it was found that Dr. John had secured 4895 votes and Dr. Srinivasan 4532 votes and they were declared elected. Mr. Pai was found to have obtained the smallest number of votes namely 1811. The result of the election was notified in the Fort St. George Gazette on 12th April 1954. On 21st July 1954 Mr. Pai filed an election petition calling in question this election on various grounds. In that petition he impleaded all the three rival candidates. In paragraph 5 of his petition Mr Pal stated that Dr. John was disqualified under Section 7(1) of the Representation of the people Act and Article 191 of the Constitution because at the time of the nomination he held an office of profit under the Government of Madras and also under the Corporation of Madras. In paragraph 6 he stated that Dr. Srinivasan was under a similar disqualification, because he was an Honorary Physician of the General Hospital, Madras. Mr. Pai alleged that he understood that the office though honorary carried with it an honorarium and various allowances and advantages. In Paragraph 7 he stated that the returning officer must have been aware of the disqualifications of these two individuals and that in consequence he must have rejected their nomination papers. The improper acceptance of the nomination papers of the respondents has materially affected the election which is wholly void. In paragraph 8 Mr. Pai stated:

> "The petitioner states that the election has not been a free election by reason of undue influence having prevailed at the election and intimidation restorted to by respondents 1 and 2 and their agents calling upon the electorate to vote for any candidate other than the petitioner alleging falsely that the petitioner was a communist. The petitioner states that the respondents 1 and 2 have been carrying on a malicious propaganda against him that he was a communist which to their knowledge was absolutely false. It was an attack also on the conduct of the petitioner, in as much as "he had styled himself and declared in his election manifesto and before Returning Officer that he was an independent non-party candidate. It was calculated to interfere with the freedom of choice of the electorate of whom many were officer of Government or Government Servants and several others, who may have had distinct anticommunist leanings or views. For this reason the petitioner states the election is wholly void besides such statement amounting to a major corrupt practice with the meaning of Section 123(5) of the Act. Particulars of some of the places and incidents are given in Schedule A of the list accompanying this petition."

In paragraph 9 Mr. Pai stated that the first respondent namely Dr. John had been actively assigned by various postal employees in diverse ways. In paragraph 10 the alleged:

> "The Petitioner understands that in several places in the city, agents of the respondents have followed postmen with a view to taking ballot papers from the voters concerned when deliveries were being effected and this practice has an element of undue influence in it, inasmuch as it leaves the voter little time to make up his mind and he very often parts with the votes to the first who approaches him. Particulars are given in Schedule B(4) of the list accompanying the petition."

In paragraph 11 he stated that both the returned candidates had incurred or authorised the incurring of expenditure in excess of the permitted limits. In paragraph 12 Mr. Pai stated that Dr. John had been guilty of an illegal practice under Section 125(3) of the Representation of the people Act, Particulars of which were appended in Schedule D to the petition. The allegation in that schedule is that Dr. John had printed and circulated various circulars relating to his election which do not bear on their face, the name and address of the printer. In paragraph 13 he stated that he understood that the ballot papers in which No. I was marked against his name were collected by the agents of the other candidates in several parts of the city and elsewhere. He also complained that he was prevented from challenging the various ballot papers in the circumstances explained in that paragraph. Paragraph 18 of the petition contains his prayers and is as follows:—

> "The petitioner therefore prays for an order:
>
> (a) declaring the election to be wholly void.
>
> (b) declaring the election of both the returned candidates as void.
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> (c) Giving a finding that the first respondent has been guilty of the corrupt practices specified in paragraph 8, 9(a) 11 and illegal practice specified in paragraph 12 of the petition, and the second respondent has been guilty of the corrupt practices specified in paragraph 8 and 11 of the petition.
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> (d) for costs of this petition."

The petition was in the usual course referred to an Election Tribunal and on 30th September, 1954, Dr. John and Srinivasan filed their written statements. On 20th October, 1954, two interlocutory applications, Nos. 7 and 8 of 1954 were filed before the Tribunal. The former was by Dr. John and in that the point was taken that under Section 84 of the Representation of the people Act Mr. Pai was entitled to claim only one of two declarations, namely, either (a) or (b) in paragraph 18 of his petition, and that, therefore, he should be called upon to elect which relief he claimed and that the other should be struck out. I.A. No. 8 was by Dr. Srinivasan and the prayer in it was as follows:—

> "(1) direct the striking out of prayers (b) and (c in paragraph 18 of the partition.
>
> (2) direct the striking out of paragraphs 5 to 7 the latter part of paragraph 8, and paragraphs 9 to 16.
>
> (3) dismiss the petition in limine as the remaining allegation lacks a list of particulars.
>
> (4) direct the petitioner,—first respondent herein—to bear the costs of this application."

on the 1st of November, 1954. The Tribunal passed an order dismissing both these applications.

On 4th November, 1954, two other application, Nos. 11 and 12 of 1954, were filed, the former by Dr. John and the latter by Dr. Srinivasan. The prayers in both these applications were indentical and they are as follows:—

> "(a) find that the election petition does not conform to the provisions of Section 83(1) and (2) of the Representation of the People Act;

(b) dismiss the Election petition in limine.

or

(c) at least strike off portions of the petition that offend Section 83(1) and (2) of the Act;

(d) try in advance two questions of law, namely—

(i) whether calling the petitioner a communist is a corrupt practice under Section 123(5) of the Act;

and

(ii) whether in the absence of an allegation that the result of the election has been materially affected charges under Section 124(4), and 125(3) the charge regarding non-compliance of the rules by the Returning Officer, should not be struck off and whether this Tribunal has jurisdiction to try them:

(e) for costs of this application; and

(f) for such other orders as this Hon'ble Tribunal deem fit in the circumstances of the case."

on 15th November, 1954, the Tribunal passed an order in which they called upon Mr. Pai to furnish certain particulars (*see* Paragraphs 8 and 9 of that order) and subject to the directions contained therein it dismissed both the applications. In effect, the Tribunal held that the petition was not barred by limitation and that the question whether calling the petitioner a communist is a corrupt practice under Section 123(5) of the Act was a mixed question of law and fact which it was not called upon to decide at that stage.

Against the orders which the Tribunal made in the two pairs of applications, in I.A. 7 and 8 and 11 and 12 two pairs of writ petitions were filed in this Court, *i.e.*, on writ petition in respect of the order in each application. The writ petitions were heard by Rajagopala Ayyangar J., who gave judgment on 11th of January 1955. He found that the Tribunal was right in taking the view that no part of the petition of Mr. Pai was barred by limitation. Dealing with the view expressed by the Tribunal that the question whether calling the petitioner a communist is a major corrupt practice within the meaning of Section 123(5) of the Act was a mixed question of law and fact that that question need not be gone into at that stage but could be disposed of later, the learned Judge made certain observations: He said:

"In my judgment the point is one of pure law and the Tribunal have committed an error of law apparent on the fact of the record in holding that this was a mixed question of law and fact and on this ground declining to adjudicate upon it as a preliminary issue. This portion of the order is therefore set aside and there will be direction that the Tribunal, *if they think fit*, will deal with this question as a preliminary point."

Dealing with the complaint of Dr. John and Dr. Srinivasan that certain particulars were not sufficient Rajagopala Ayyangar J. recorded the view:

"In my judgment therefore the returned candidates were not entitled to insist upon Mr. Vasantha Pai setting out the names of the voters alleged to be unduly influenced."

Another point taken before Rajagopala Ayyangar J. was that the election petition did not specify the community group or section which had exercised coercion or intimidation and the community group and section on which coercion or intimidation was exercised. Dealing with that objection the learned Judge observed:

"I am clearly of the opinion that the Tribunal committed an error apparent on the face of the records, or failed to exercise a jurisdiction vested in them by not addressing themselves to the question as to whether the terms of Section 100(1)(b) were satisfied by the allegations contained in the petition read with the Schedules. The Election Tribunal are, therefore, directed to consider the question and pass such appropriate orders as they think fit."

From the decision of Rajagopala Ayyangar J. appeals were filed. On 29th April, 1955, the Appellate Bench pronounced Judgment in the course of which it observed:

> "The result of our construction of rule 119 is that the election petition is not maintainable against the respondents 1 and 2 so far as relief (b) in paragraph 18 is concerned. The Election Tribunal will, therefore, have no jurisdiction to proceed with the trial of the petition in respect of this relief. The fact that after listening to the parties they over ruled the objection as to their jurisdiction in this behalf does not make any difference. If, as we have now found, the Tribunal was not competent to entertain the petition so far as that relief is concerned, the appropriate writ will therefore, be a writ of prohibition prohibiting the Election Tribunal from proceeding with the trial of the election petition, so far as relief (b) in paragraph 18 of the petition is concerned, we accordingly direct such a writ of prohibition to issue to the Election Tribunal.
>
> The appeals are otherwise dismissed."

When the case went back to the Tribunal various questions were raised as to what was the scope of the writ that had been issued and on that the Tribunal framed this additional issue:

> "Whether in view of the writ of prohibition in the Writ Appeals Nos. 25 and 26 of 1955, the petitioner can claim to rely on the grounds relating to the validity of the election of respondents 1 and 2 for the declaration sought in paragraph 18(a) of the petition that the election is wholly void and for the finding sought in paragraph 18(c) of the petition."

Again taking up the question whether calling the petitioner a communist amounted to a major corrupt practice under Section 123(5) of Representation of the People Act, the Tribunal made an order on 3rd June, 1955 to this effect:

> "If this point has to be dealt with as a preliminary issue, the allegations of fact made by the petitioner in paragraph 8 of his election petition should be assumed to be true. Mr. Nambiar the learned counsel for the first "respondent only agreed to the abovementioned assumption. It is necessary to have similar admission by the second respondent and also that both respondents were aware that the petitioner had declared himself as an independent non-party candidate. If these be done, the Tribunal will deal with it as a preliminary issue. The respondents 1 and 2 will intimate in writing their admissions for the purpose of dealing with it is preliminary issue by 11th June, 1955."

On the question of insufficient particulars, the Tribunal observed:

> "Now the Tribunal feels that the particulars are inadequate and the petitioner is therefore directed to specify fully and clearly the particulars of this allegation of coercion or intimidation and the case which the respondents have to meet. The petitioner will furnish these particulars to the Court before 11th June 1955, furnish with the same time a copy thereof to each of the respondents. The respondents will file their rejoinder before 15th June, 1955 when the election petition will be taken up for enquiry."

A few words will make the matter clearer. In paragraph 18 of his petition Mr. Pai had asked for three reliefs: (a) for an order declaring that the entire election was void; (b) for an order declaring that the election of Dr. John and Srinivasan was void and (c) for a finding that Dr. S. John and Srinivasan had been guilty of various corrupt practices. The result of the order made by the Bench in the appeal was that the Tribunal was debarred from proceeding with the trial of the petition in respect of the second relief, namely, the trial of the question, whether the election of both the returned candidates was void. The question which appears to have been argued before the Tribunal was, whether notwithstanding the direction that the trial of the petition in respect of relief (b) was barred, it was open to the petitioner to rely on allegations germane to that prayer for the purpose of making out his case in respect of prayers (a) and (c). In other words, if a circumstances was relevant to substantiate prayer (a) or prayer (c) was that ruled out by reason of the fact that it was relevant also in respect of prayer (b). By an order which it made on 21st June, 1955, the Tribunal decided that the decision of the appellate Bench did not preclude it

from investigating matters which were germane to prayers (a) and (c) merely because those matters also happened to be germane to prayer (b). It observed:

> "In the above circumstances, and where the writ issued refers only to the relief and the appeals are otherwise dismissed, we are afraid we will be reading too much into it if the contention of the respondents 1 and 2 be accepted and the prohibition extended by implication to the Tribunal's duty under Sec. 99. This part of the issue is accordingly found in the affirmative for the election petitioner."

As regards the direction of Rajagopala Ayyangar, J., to decide as a preliminary point the question whether calling a candidate a communist amount to a major corrupt practice or not, the Tribunal took the view that in view of the decision given by the Appellate Bench, it was not necessary at that stage to go into that question. It stated:

> "in the writ petition this issue was directed by His Lordship Mr. Justice Rajagopala Ayyangar to be treated as a question of law and dealt with as a question of law and dealt with as a preliminary point, if the Tribunal things fit. This related to a corrupt practice coming under Section 123(5) of the Act. Subsequently, in the writ appeals, a writ of prohibition was issued so far as the relief in paragraph 18(b) is concerned, prohibiting the trial of the petition in respect of that relief. It is, therefore, unnecessary to deal with it as a preliminary point for that purpose though in the view we have taken with regard to the second part of the additional issue, this may have to be decided only at the conclusion of the trial and when the court makes an order under Section 98 and 99 of the Act".

From this order three writ petitions have been filed. W.P. No. 476/55 is by Dr. Srinivasan and the principal prayer he seeks is:

> "To issue a writ of prohibition or other appropriate writ in restraining the first respondent from trying any issue or enquiring into any allegation in Election Petition 28 of 54, which would be relevant only for the purposes of giving relief to the second respondent under para. 18(b) of his election petition, which has been expressly prohibited by an earlier writ issued from this Hon'ble Court in W.A. No. 26/55 (order, dated 29th April, 1955)."

W.P. No. 478/55 is by Dr. John and the principal prayers he seeks are:

> "to issue a writ of prohibition or such other writ or directions as may be appropriate, by prohibition the third respondent, Tribunal, from considering any allegation referable to relief in paragraph 18(b) of the election petition for any purpose whatsoever whether for a finding under Section 99 of the Act or otherwise; and
>
> (b) from acting in contravention of the order passed by His Lordship Mr. Justice Rajagopala Ayyangar in Writ Petition Nos. 719 and 723 of 1954, dated 11th January, 1955; and
>
> (c) to award the cost of this petition."

It will be notice that the first prayer in Dr. John's petition is the same as the principal prayer in Mr. Srinivasan's petition. W.P. 479/55 is also by Dr. John wherein he seeks for a suitable writ to quash the order which the Tribunal made on 21st June, 1955.

In the main, three questions were argued before me:

(1) By reason of the decree given in the Writ Appeals the Tribunal was wrong in taking the view that it could investigate matters which were relevant to prayers (a) and (c) in paragraph 18 of the petition of Mr. Pai when such matters were relevant to prayer (b).

(2) The Tribunal was wrong in refusing to decide as a preliminary point the question, whether calling a candidate a communist would amount to a corrupt practice or not.

(3) The Tribunal was wrong in permitting Mr. Vasantha Pai to furnish further particulars.

It is at this stage necessary to pass rapidly in review some of the sections of the Representation of the People Act which are here relevant.

Section 80 of the Act provides that election shall not be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act. Section 81 permits either a candidate or an elector to present an election petition. The petition may be founded on one or more of the grounds specified in sub-sections (1) and (2) of section 100 and section 101 of the Act. It will be necessary to refer to Section 83 of the Act more in detail presently: but here it is enough to say that the first sub-section requires that an election petition shall contain a concise statement of the material facts on which the petitioner *relies*. The second sub-section requires the petition to be accompanied by a list containing full particulars of any corrupt or illegal practice which the petitioner alleges including the names of the parties and the date and place of the commission of each practice. Sub-section (3) empowers the Tribunal to allow the particulars in the list to be amended and also to make an order directing further and better particulars to be furnished, for the purpose of ensuring a fair and effectual trial of the petition. Section 84 enacts that a petitioner may claim any one of the following declarations: (a) that the election of the returned candidate is void; (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected; or (c) that the election is wholly void. Section 85 requires the Election Commission to dismiss a petition which does not comply with the provisions of Sections 81, 83, or 117 of the Act. Section 117, it may be stated here, relates to the deposit of security. Under Section 90(4) the Tribunal may dismiss an election petition which does not comply with the provisions of Section 81, Section 83 or Section 117, notwithstanding that the Election Commission has not exercised its powers under section 85. Under Section 98 "the tribunal shall on the conclusion of the trial of an election petition make an order—

(a) dismissing the election petition; or

(b) declaring the election of the returned candidate to be void; or

(c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected; or

(d) declaring the election to be wholly void."

Where any charge is made in the petition of any corrupt or illegal practice having been committed at the election, section 99 requires the Tribunal at the time it makes an order under Section 98 to make a further order, finding whether any corrupt or illegal practice has or has not been proved to have been committed by, or with the connivance of, any candidate or his agent at the election, and the nature or that corrupt or illegal practice; and the names of all persons, if any, who have been proved at the trial to have been guilty of any such practice. The finding which the Tribunal records under section 99 has very important consequences. Where a person has been found to be guilty of certain corrupt or illegal practice, he is by reason of Section 7 of the Act disqualified for membership of Parliament and the State Legislature. By reason of Sections 139(2) and 142, a finding that individual has been guilty of a corrupt practice will entail disqualification as a voter also. Section 100 sets out the grounds on proof of which an election may be declared void. Under Section 101 the Tribunal is required to declare the whole election void if in its opinion, the election has not been a free election by reason of bribery or undue influence having extensively prevailed at the election or where it finds that the election has not been a free election by reason of coercion or intimidation practised by any particular community, group or section on another community, group or Section or if the result has been materially affected by the improper acceptance or rejection of a nomination. Under Section 100(2), the Tribunal shall declare the election of the returned candidate to be void if it finds that the election has been procured or induced or the induced or the result of the election has been materially affected, by any corrupt or illegal practice, or if it finds that any corrupt practice specified in Section 123 has been committed by the returned candidate or his agent or any other person with the connivance of the candidate or his agent, or if the result of the election has been materially affected by the improper reception or refusal of a vote or by any non-compliance with the provisions of the constitution or of the Act or any other rule or law or by any mistake in the use of any prescribed form. Section 101 sets forth the grounds on which a candidate other than the returned candidate may be declared to have elected. Section *109 enacts:

*"Where an application for withdrawal of an election petition is made after a Tribunal has been appointed for the trial of such a petition, the election petition may be withdrawn only by leave of the Tribunal."

Section 110 provides:

"If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners."

Sub-Section (2) of Section 110 requires the Tribunal to refuse leave to withdraw an application if in its opinion such an application has been induced by any bargain or consideration which ought not to be allowed. Under sub-section (3) notice of the withdrawal has to be given by publication in the official gazette and thereupon any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner.

It will be noticed that to get relief under Section 84(a) that is to say, for a declaration that the election of the returned candidate is void, the case must be brought within the scope of Sub-Section (2) of Section 100. To get the relief specified in Section 84(b) that is to say, to get a declaration that the election of the returned candidate is void and that the petitioner or any other candidate has been duly elected, the case must be brought within the scope of sub-section (2) of Section 100 and Section 101. To get the relief prescribed in Section 84(c), namely that the election is wholly void, the case must be brought within the scope of sub-section (1) of Section 100. It will be noticed that sub-section (1) of Section 100 and sub-section (2) of Section 100 overlap. For instance, bribery is undoubtedly a corrupt practice and proof that bribery has been practised by a candidate or his agent or any other person with his connivance could render his election void. But in order to make the whole election void, it must be shown that there has been an extensive use of bribery. It will be appreciated that one way of proving that there was extensive bribery would be to adduce evidence to show that there was a large number of specific cases of bribery.

As I said before, one of the question on which arguments were addressed to me is this. In order to decide whether Mr. Pai is or is not entitled to reliefs (a) or (c) in paragraph 18, the Tribunal cannot investigate matters which are germane to prayer (b) in paragraph 18 of the petition. The argument was put before me in various ways. By reason of the decision of the Appellate Bench the trial of the petition so far as it relates to prayer (b) is barred. The enquiry therefore in respect of any other matter which happens to be germane to prayer (b) is also barred. The enquiry is open only as regards prayers (a) and (c) in paragraph 18. If in the course of an enquiry into matters solely relevant to prayers (a) or (c) any corrupt practice is proved. It will be open to the Tribunal to give its finding under Section 99 of the Act. But it cannot investigate such matters if these happen to be relevant in respect of prayer (b) also. In any case, the Tribunal cannot embark upon an enquiry merely for the purpose of recording a finding under Section 99. The Tribunal has no jurisdiction to make an enquiry merely for the purpose of making such an order. The only relief which the petitioner can now seek is for a declaration that the entire election is void The Tribunal ought to confine itself to the trial or enquiry, strictly necessary to grant or refer this particular relief and it is only in respect of matter that have a bearing on this relief that the Tribunal can record a finding under Section 99.

Support was sought for this argument from the language of the Statute. Section 99 begins: "At the time of making an order under Section 98....." In order therefore to find out what that time is we go to Section 98; and there the words used are; "At the conclusion of the trial of an election petition....." The trial of a petition must naturally be confined to ascertain whether the petitioner is or is not entitled to the relief he has a right to ask for. The only relief which Mr. Pai has a right to ask for at this stage is for a declaration that the entire election is void.

Then again it was said let us go back to Section 83. The third sub-section requires further particulars to be furnished 'for the purpose of ensuring a fair and *effectual trial of the petition.*' This again means that the enquiry must be confined to matters in investigation of which is necessary to decide whether the petitioner is or is not entitled to the relief he seeks: otherwise, it was asked when would be an end to any enquiry? Any disgruntled candidate may file a petition

and then give an interminable list of corrupt or illegal practice alleged to have been practised by the returned candidate: is the Tribunal to go on enquiring into every one of these matters even though these may have no connection with the principal relief asked for? Anticipating the argument that Section 99 places on the Tribunal the duty of making an order, finding whether any corrupt or illegal practice has been proved to have been committed and if so by whom, it was remarked that this duty again must be related to the trial proper, and it was said that the duty is not an absolute duty irrespective of the relief asked for. It has been notice that under Section 85 the Tribunal may dismiss any election petition which does not comply with the provisions of Section 81 or 83 or 117. It was asked; supposing the Tribunal finds that the petition is barred and propose to dismiss it, can it be seriously held that notwithstanding the finding, the Tribunal still must go on with the enquiry in order to give a finding under Section 99? The Tribunal is not in the position of an investigating police officer. The moment it is clear that the petition is time-barred, the petitioner will not be interested in proceeding further with the matter. How then is the Tribunal to obtain evidence in order to record a finding under Section 99?

There is, of course, something to be said for this point of view, but it is not, so it seems to me the whole of the matter. This view proceeds principally on the basis that an election petition is in all essential respects similar to an ordinary civil suit; but that is not quite so. An election petition is not a matter in which the only person interested are the candidates who strove against each other at the elections. The public also are substantially interested in it and this not merely in the sense that an election has news value. An election is an essential part of the democratic process. The citizens at large have an interest in seeing and they are justified in insisting that all elections are fair and free and not vitiated by corrupt or illegal practices. In a civil action the only persons who are interested are the individuals arrayed as plaintiffs or defendants, but that is not so in an election petition. That is made clear from a consideration of the provisions made in the Act for the withdrawal of election petitions. In a civil action if the plaintiff and the defendant compromise, they can report settlement to the Court and the suit will be dismissed or a decree made as the case may be. But in the case of an election petition where it appears to the tribunal that it is sought to withdraw the petition by reason of any bargaining or consideration which ought not to be allowed, the Tribunal is required to refuse leave for withdrawing the petition. Again if even the persons who at first filed the petition want to withdraw, they are required to give notice of the fact so that other persons, if they think fit, may be able to come on record. Even after the death of a petitioner any person who might have been the petitioner may within 14 days of the publication of the notice of abatement by reason of the death apply to be substituted in the place of the dead petitioner. In addition to all this a specific duty is imposed on the Tribunal to find whether any corrupt or illegal practice has been practised at the election and if so by whom. In view of the manifest difference between a civil suit and an election petition it will not be right, it seems to me to press the analogy founded on the basis of a civil suit very far when we have to deal with an election petition.

Let us read Section 83 again. Sub-section (1) of that section require that an election petition shall contain a concise statement of the material facts on which the petitioner relies. Sub-section (2) requires that the petition shall be accompanied by a list setting forth the full particulars of *any* corrupt or illegal practice which the petitioner *alleges* including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice Sub-section (3) empowers the Tribunal to allow an amendment of or addition to the list for the purpose of ensuring a fair and effectual trail of the petition. 'Trial of the petition' referred to sub-section (3) must it seems to me, refer to matters set out in sub-section (1) of Section 83 and also to the matters set out in sub-section (2) of Section 83. In other words, the enquiry has to be not merely in respect of the material facts on which the petitioner relies as set out in sub-section (1) but also in respect of all matters included in the list referred to in sub-section (2). If the intention of the Act had been to confine the enquiry but the Tribunal to matters necessary to determine whether the petitioner is or is not entitled to the relief he seeks, it seems to me, it would have been sufficient to enact sub-section (1) of Section 83 and that sub-section (2) of Section 83 would not have been really necessary.

Now let us read Section 98 again. It begins with the words "At the conclusion of the trial of an election petition" which would in the view I have explained take

in all matters referred to in sub-section (1) and (2) of Section 83. Under Section 99 at the conclusion of the trial the tribunal is required to give its finding whether any corrupt or illegal practice has been committed and, is so by whom. It seems to me therefore that a duty is enjoined on the Tribunal to investigate and give a finding in respect of relief (c) in paragraph 18 of the petition of Mr. Vasantha Pai.

In respect of the argument that in this view there would be no end to an enquiry, the obvious answer is that every Tribunal has an inherent power to prevent an abuse of its process. It will also be appreciated that if the contention put forward on behalf of the writ petitioners is sound and if on the basis thereof an enquiry into matters necessary to ascertain whether the petitioner is or is not entitled to the relief he seeks in paragraph 18(a) is to be circumscribed by cutting out and refusing to investigate matters which, however germane they may be to that enquiry also happen to be germane to the relief set out in paragraph 18(b) the result may well be very unsatisfactory. In the present case we are handicapped by the circumstance that the parties are still sparring in air and the enquiry into facts has not begun at all. Nevertheless how the amputation which the writ petitioners insist on may prove fatal to justice can be made clear by an illustration drawn from another branch of the law. Suppose a person were prosecuted for breach of trust and for falsification of accounts. Let us further suppose that by reason of an order made in revision the enquiry into the falsification is prohibited. If we were to hold that by reason of such an order, the evidence which may have a bearing on the falsification charge cannot be investigated in order to ascertain whether there has been criminal breach of trust or not, manifest injustice may result: a guilty man may escape, or even worse, an innocent man may be unjustly convicted.

There are indications in the statute itself to show that the trial of an election petition includes an enquiry into allegations of corrupt and illegal practices said to have been committed at the election and that it is not limited merely to ascertain whether the petitioner is or is not entitled to the relief he seeks.

Under Section 125(3) of the Act the issue of any circular, placard, or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof is an illegal practice. Now the omission of the name of the printer or publisher in a circular or placard or poster cannot possibly have any effect on the result of an election. None-the-less, it is an illegal practice and under Section 99 of the Act, the Tribunal is required to give a finding on the matter if such a practice is alleged. It would not therefore be right to say that the trial of an election petition must be confined to matters, an investigation of which is necessary to decide whether or not the petitioner is entitled to the relief he seeks.

Again, making a false return of expenses relating to an election can have no possible result upon the election. Of course, the expenditure of money may affect an election; but the making of a false return of expenses cannot affect the result. Nevertheless Section 143 provides that if default is made in making a return of election expenses, or if such a return is found, either upon the trial of an election petition under part VI or by any Court in a judicial proceeding, to be false in any material particular, the candidate and his agent shall be disqualified from voting at any election for a certain period. I would draw attention to the words I have underlined. They make it plain that the Legislature envisages an enquiry into the truth or falsity of a return of election expenses in an election petition.

On an examination of the language of the statute, I am inclined to consider that the view taken by the Tribunal is right.

Reference may also be made to the decision in Raj Krushna Vs. Binod (1). That was a case in which the successful candidate (the appellant before the Supreme Court) at an election had filed about two dozen nomination papers. In five of them the proposer was a Government servant and in four the seconder. The first respondent before the Supreme Court contended that this was the first step in a scheme to get the assistance of Government Officers in furtherance of the appellant's election and to use and utilise them for the purposes of the election. A number of allegations had been made in the election petition about corruption, undue influence, bribery and illegal practice. The Tribunal set aside the election on the ground that as the proposer and seconder referred to were admittedly

(1) A.I.R. 1954 S.C. p. 202.

Government servant that constituted a major corrupt practice and so invalidated the election. The appellant then petitioned the High Court for the issue of a Writ which was refused. Thereupon he went to the Supreme Court. The Supreme Court set aside the order of the Election Tribunal and made the following observations:

> "We wish to record our disapproval of the way in which this Tribunal shirked its work and tried to take a short cut. It is essential that these Tribunals should do their work in full.
>
> A number of allegations were made in the petition and about corruption and illegal practices, undue influence and bribery. It was the duty of the Tribunal not only to enquire into those allegations, as it did, but also to complete the enquiry by recording findings about those allegation and either condemn or clear the candidate of the charges made."

Those observations support the conclusion I have reached on an examination of the language of the Statute.

It is necessary now to refer to another decision of the Supreme Court which was cited before me. That is reported in Sucheta Kripalani *Vs.* Dulat (1), Paragraph 16 of the Judgement runs as follows.—

> "The next question argued was whether an Election Tribunal can enquire into a minor corrupt practice if it is of such a nature that, standing by itself, it could not have been made the basis of an election petition because it could not materially affect the result of the election. We need not go into that because the question is purely acadmic in this case. The allegation about the minor corrupt practice does not stand by itself. There are also allegations about major corrupt practices which require investigation and the minor corrupt practices alleged are reasonably connected with them. Section 143 of the Act is a complete answer to the question of the Tribunal is jurisdiction on this point when it is properly seised of the trial of an election petition on other grounds. Whether it could be properly scised of such a trial if this had been the only allegation, or if the minor corrupt practice alleged was not reasonably connected with the other allegations about major corrupt practices, does not therefore arise.

On the basis of this passage it was argued that if any corrupt or illegal practice were alleged, it is the duty of the Tribunal to go into it. On behalf of the Writ Petitioners it was contended that this very passage shows that the Tribunal cannot enquire into minor corrupt practices unless they are promimately connected with the major corrupt practices that might have influenced the result if an election. I do not read this passage as in any sense involving a modification of the view which the Supreme Court recorded in the earlier case cited. In fact, the very passage in the same judgment seems to show that there was no intention whatsoever to depart from the earlier view. It proceeds:

> "As the trial is proceeding on the other matters the Tribunal is bound under Section 143, now that the issue has been raised, also to enquire into the question of the falsity of the return. Without such an enquiry it cannot reach the finding which Section 143 contemplates. We need not look into the other sections which were touched upon in the arguments and in the Courts below because Section 143 is clear and confers the requisite jurisdiction when a trial is properly in progress".

I therefore consider that the Tribunal was right in taking the view it did on this part of the case.

The next complaint of the Writ Petitioners is that in view of the direction that had been given by Rajagopala Ayyangar, J. the Tribunal acted erroneously in not giving a finding on the legal question whether it would amount to a major corrupt practice to call a candidate a communist. Now, though in his judgment Rajagopala Ayyangar, J. clearly stated that in his view the question is one of pure law and that the Tribunal have committed an error of law apparent on the face of the record in holding that it was a mixed question of law and fact and on that ground declined to adjudicate upon it as a preliminary issue nevertheless in the directive part of his judgment he introduced the words "if they think fit." I shall quote again this particular sentence. "This portion of the order is, therefore, set aside and there will be a direction that the Tribunal *if they think fit,* deal with this question as a prelimi-

(1) A.I.R. 1955 S.C. p. 758.

nary point". The words "if they think fit" have been carried forward into the decretal part of the order. Therefore, as the order stood, the Tribunal would have had a discretion to decide whether it would go into the question at once or later. Assuming for the moment that this is not so and that the Tribunal deliberately disobeyed the directions which Rajagopala Ayyangar L. had given—I am not of course suggesting that it did anything of the kind—in such case the remedy would not be to come again to this Court by way of a Writ Petition. On such a petition all that can be done is to repeat the earlier order. If the contention is that the Tribunal has disobeyed the order of Rajagopala Ayyangar, J. then the petitioners who think they are aggrieved must seek some other relief. On the other hand, if the order is not clear, then the proper procedure is to seek a clarification of the order. It cannot be said that this is a case in which the Tribunal has misunderstood the order.

Incidentally it seems to me that the Tribunal had jurisdiction to take the view it did. It is clear from the affidavit of Dr. John himself that the preliminary issue whether calling a candidate a communist amounted to a corrupt practice or not was argued at length and fully. I now quote from the affidavit of Dr. John:

> "I am informed that what Mr. Krishnaswami Iyengar said was that the issue may not be considered either as a priliminary issue or otherwise for the purpose of a finding that the election of the returned candidates is void as this prayer and the grounds relating thereto were held barred by limitation and this Honourable Court issued a Writ of Prohibition to the "Tribunal against trying them, but the issue had to be tried as a preliminary point for consideration of the question whether there was any exercise of undue influence and intimidation as stated in the petition, the foundation of which was allegation that the election petitioner was called a communist."

In view of the stand taken by counsel for Dr. John and in view of the fact that the order of Rajagopala Ayyangar, J. was qualified by the words 'if they think fit' the Tribunal was entitled to say that it would go into the matter at a later stage.

The third complaint raised before me was about the direction of the Tribunal requiring that fuller particulars should be furnished. I find it difficult to see how such a direction can form the subject-matter of a Writ Petition at all. Under the Act a Tribunal has full authority and power to require that additional particulars should be furnished. By such particulars being furnished the Writ Petitioners can in no way be prejudiced. In fact, at one stage of these long drawn out proceedings their complaint was that the particulars were inadequate.

In the result all these Writ Petitions are dismissed with costs of the contesting Respondent.

WRIT PETITION NO. 476 OF 1955

MEMORANDUM OF COSTS

	Rs.	A.	P.
2nd Respondent's Costs.			
Stamp for Vakalatnama	3	0	0
Advocate's	200	0	0
Translation and Printing charges	0	0	0
To be paid by the petitioner to the 2nd Respondent.*	203	0	0

Advocate's fee certified Rs. 250/-

WRIT PETITION NO. 476 OF 1955

Memorandum of Costs

	Rs.	A.	P.
1 and 2 Respondents' costs			
Stamp for Vakalatnama	3	0	0
Advocate's fee (allowed by Court)	200	0	0
Translation and Printing Charges	0	0	0
To be paid by the Petitioner to the respondents 1 and 2	203	0	0

*Fee certified by Advocate for Respondent is Rs. 250. No fee certificate filed by Advocate for Respondent 2

(Sd.) R. NARAYANASWAMY IYER,
Assistant Registrar, A.S.,

(True Copy)

(Sd.) Sub-Assistant Registrar, A.S.

Dated the th November 195

ORDER

W.P. Nos. 476, 478 *and* 479 *of* 1955.

Dismissing with costs the petitions for the issue of a Writ of Prohibition restraining the 1st Respondent in W.P. No. 476 of 1955 and the 3rd Respondent in W.P. No. 478 of 1955 from trying any issue of enquiring into any allegation contained in Election Petition No. 28 of 1954 and for the issue of a Writ of Certiorari in W.P. No. 479 of 1955 calling for the records from the Election Tribunal, Madras in Election Petition No. 28 of 1954 and quash the order of the Tribunal made therein.

[No. 82/28/54/3.]

By Order,

A. KRISHNASWAMY AIYANGAR, Secy.

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